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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,316	09/09/2003	Philip Katz		2164
7590	10/16/2006		EXAMINER	
Stephen E. Feldman, P.C. 12 East 41st Street New York, NY 10017			MILLER, WILLIAM L	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 10/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/658,316	KATZ ET AL.
	Examiner	Art Unit
	William L. Miller	3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1)  Responsive to communication(s) filed on 22 May 2006.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4)  Claim(s) 1 and 3-8 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1 and 3-8 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_ .

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_ .

5)  Notice of Informal Patent Application

6)  Other: \_\_\_\_\_ .

## DETAILED ACTION

### *Drawings*

1. The replacement drawing sheet, Fig. 7, received on 05-22-2006 has been approved by the Examiner.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schachter (US#D340670) in view of Friedman et al. (US#6430963).
4. Regarding claims 1, 4, and 5, Schachter discloses a brilliant cut gemstone comprising: a brilliant cut crown on an upper side of a girdle including upper girdle facets and upper corner facets; the girdle having plane comprising 8 sides and shaped as an “approximately” equilateral octagon (Fig. 1); the corner facets spaced from the girdle (Fig. 2); and a pavilion located on a lower side of the girdle. Note: See annotated Fig. 2.
5. Regarding claim 1, Schachter fails to disclose the pavilion including lower girdle facets, bezel star facets, and lower corner facets wherein the angle between a table and the lower girdle facets is approximately 50-60 degrees. However, Friedman teaches in Fig. 3 a brilliant cut gemstone wherein the pavilion 30 includes lower girdle facets 32, bezel star facets 42, and lower corner facets 34 wherein the angle between a table 16 and the lower girdle facets is “approximately” 50-60 degrees (Fig. 3). This pavilion configuration enhances the brilliance of

the gemstone. Therefore, as taught by Friedman, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Schachter such that the pavilion included lower girdle facets, bezel star facets, and lower corner facets wherein the angle between a table and the lower girdle facets was “approximately” 50-60 degrees for enhanced brilliance.

6. Regarding claim 3, Friedman teaches the angle between the table and bezel star facet is “approximately” 38.1 to 43.5 degrees (Fig. 3).

7. Regarding claim 6, Friedman teaches the angle between the table and lower corner facets is “approximately” 40.1 to 46.9 degrees (Fig. 3).

8. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schachter in view of Friedman as applied to claim 1 above, and further in view of Wueste (US#6698239).

9. Regarding claim 7, it is unclear if Schachter discloses the angle between the table and upper girdle facets is 25-40 degrees. However, Wueste teaches a brilliant gemstone cut wherein the angle between the table and upper girdle facets is 25-40 degrees, namely 32-35 degrees (Table 2 as girdle plane 351 in Fig. 3C and table plane are substantially parallel), for enhanced brilliance. Therefore, as taught by Wueste, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Schachter such that the angle between the table and upper girdle facets was 25-40 degrees, namely 32-35 degrees, for enhanced brilliance.

10. Regarding claim 8, it is unclear if Schachter discloses the angle between the girdle and upper corner facets is 30-45 degrees. However, Wueste teaches a brilliant gemstone cut wherein the angle between the girdle plane 351 (Fig. 3C) and upper corner facets is 30-45 degrees,

namely 29-32 (30-32) degrees (Table 2), for enhanced brilliance. Therefore, as taught by Wueste, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Schachter such that the angle between the girdle and upper corner facets was 35-40 degrees, namely 29-32 (30-32) degrees, for enhanced brilliance.

***Response to Arguments***

11. The applicant has filed a terminal disclaimer in an attempt to overcome the 35 U.S.C. 103(a) rejection as the applied Friedman '963 is commonly owned by the applicants' assignee. However, Friedman '963 qualifies as prior art under 35 U.S.C. 102(b), and therefore the terminal disclaimer is ineffective.

12. The applicant provided no further arguments.

***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

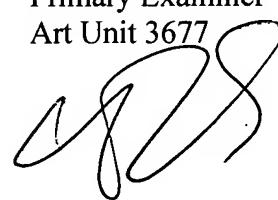
Any inquiry concerning this communication or earlier communications from the examiner should be directed to William L. Miller whose telephone number is (571) 272-7068. The examiner can normally be reached on Tuesday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

William L. Miller  
Primary Examiner  
Art Unit 3677

WLM



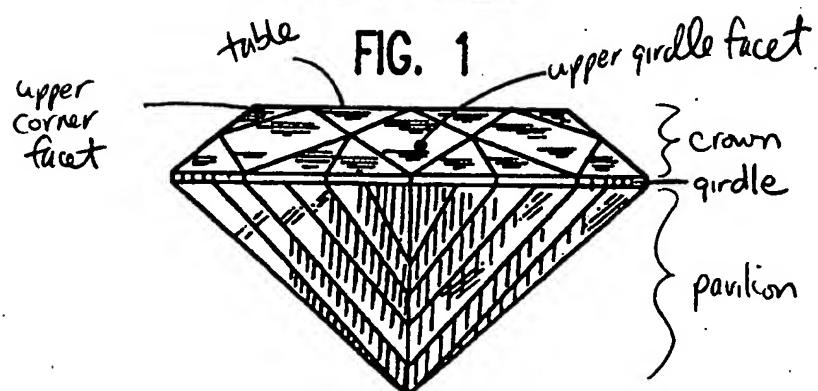
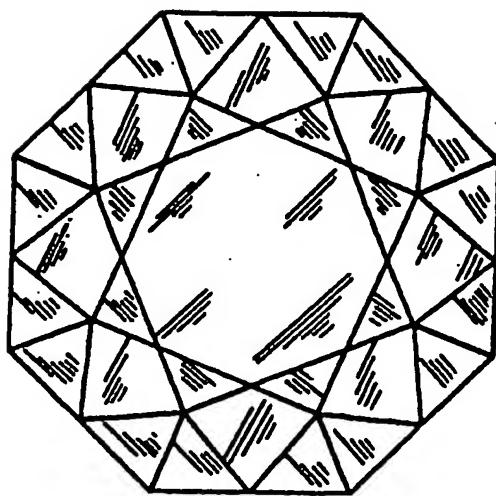


FIG. 2

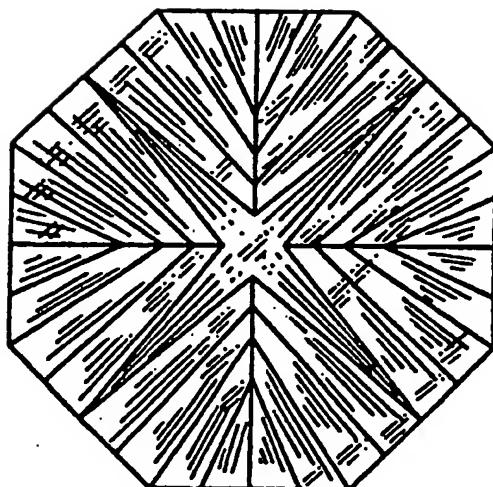


FIG. 3